



## Guidance for Restaurants: On-Premises Workplace Infection Control Practices Impacting Employees\*

August 20, 2020

### **1. May Restaurants require employees to provide notes from healthcare providers confirming they can return to work?**

A: Generally, even if employers do not require disclosure of medical information, they can require notes confirming employees can return to work without violating the Americans with Disabilities Act (ADA) because the request is not disability related. As a practical matter, however, public health authorities have warned that doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide “fitness-for-duty” documentation. In addition, please note that some jurisdictions have laws forbidding employers from requesting notes from asymptomatic employees.

### **2. May Restaurants require employees to have their temperatures checked every time they show up to work?**

A: Generally, measuring an employee’s body temperature is a medical examination. However, the EEOC has stated that because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may, during this emergency, legally require the measuring of employees’ body temperature. Still, employers need to be aware that some people with COVID-19 do not have a fever. If you decide to establish such a policy, consider contacting your insurance carrier for suggestions and retain a contract nurse for the task. Alternatively, perform the task with an employee in a supervisory capacity who will maintain confidentiality of the results to the maximum extent possible. Also, employees waiting to be screened should still be at least six feet apart in line.

### **3. Is there liability under HIPAA Privacy Rules for Restaurants requiring employees to have their temperatures checked every time they show up to work?**

A: When a restaurant is functioning as an employer, it is neither a HIPAA covered entity nor a business associate of a covered entity, although it may sponsor a covered health plan subject to the HIPAA privacy and security rules. Thus, when an employer collects employee temperatures functioning as an employer, such as in connection with protecting its workforce and the community during the COVID-19 pandemic, that information is not subject to the HIPAA Privacy Rule. The employer should still consider where to conduct the temperature screening and do it in an area preferably separated with at least a screen, if possible.

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**4. May employers send employees home if they have a fever or develop other symptoms of a COVID-19 infection?**

A: Yes. An employer never has to allow a sick employee to remain at work. Procedures should already be in place to handle sending people home if the employer is checking temperatures and a fever is identified. The procedures must be uniformly applied. Also, the CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. The EEOC has stated that advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the EEOC has stated that such actions would be permitted under the ADA if the illness was serious enough to pose a direct threat.

**5. May employers require employees to wear face coverings or masks while working?**

A: Many jurisdictions require individuals to wear face coverings, including restaurant workers. The Association has a comprehensive list of "[Facial Covering & Health Screening Requirements](#)." For questions on restaurants requiring customers to wear face coverings, please see the Restaurant Law Center's "[Guidance for Restaurants on Customers Face Covering Use](#)." As to employees, since April, the CDC has been recommending the use of face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others. In jurisdictions where it is mandated, employers may require the use of such face coverings relying on the CDC guidance.

If an employee requests an accommodation under the ADA, it should be addressed on a case by case basis. An employer can request medical documentation from an employee, but not from a customer, about both the underlying health condition and the necessity of an accommodation to prove wearing a mask is unsafe or unhealthy due to the employee's disability. When an employee proves the need for a waiver from a mask-wearing requirement, the employer needs to explore potential reasonable accommodations. However, a restaurant need not provide an accommodation that would impede the business's ability to safely provide its goods and services or result in undue hardship on the restaurant. In other words, if the nature of the employee's work is such that he could work from home or in a secluded and socially distanced area, the accommodation should be granted. A waiter could not get a similar accommodation since, under current CDC guidance, allowing unmasked employees to serve the public in a restaurant creates a health and safety risk and, in jurisdictions where face coverings are mandated, it could lead to civil or criminal liability.

**For questions regarding this document, please contact [Angelo Amador](#), Executive Director of the Restaurant Law Center, at 202-331-5913 or via email at [aamador@restaurant.org](mailto:aamador@restaurant.org).**

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